

875—218.505(91D) Driver salespersons.

218.505(1) Where drivers who deliver to an employer's customers the products distributed by the employer also perform functions concerned with the selling of the products, and questions arise as to whether the employee is employed in the capacity of outside salesperson, all the facts bearing on the content of the job as a whole must be scrutinized to determine whether the employee is really employed for the purpose of making sales rather than for the service and delivery duties which the employee performs and, if so, whether the employee is customarily and regularly engaged in making sales and the employee's performance of nonexempt work is sufficiently limited to come within the tolerance permitted by rule 218.5(91D). The employee may qualify as an employee employed in the capacity of outside salesperson if, and only if, the facts clearly indicate that the employee is employed for the purpose of making sales and that the employee is customarily and regularly engaged in the activity within the meaning of the rules. As in the case of outside salespersons whose jobs do not involve delivery of products to customers, the employee's chief duty or primary function must be the making of sales or the taking of orders if the employee is to qualify under the definition in 218.5(91D). The employee must be a salesperson by occupation. If the employee is, all work that the employee performs which is actually incidental to and in conjunction with that employee's own sales effort is exempt work. All other work of the employee is nonexempt work. A determination of an employee's chief duty or primary function must be made in terms of the basic character of the job as a whole. All of the duties performed by an employee must be considered. The time devoted to the various duties is an important, but not necessarily controlling, element.

218.505(2) Reserved.

SOURCE: 29 CFR 541.505.